

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

October 23, 2007 Session

**STATE OF TENNESSEE v. TWAIN DEMARIO VAUGHN**

**Direct Appeal from the Criminal Court for Davidson County**  
**No. 2004-D-3057     Mark J. Fishburn, Judge**

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**No. M2006-01659-CCA-R3-CD - Filed January 9, 2008**

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A Davidson County jury convicted the Defendant of one count of reckless homicide, one count of felony murder, one count of aggravated robbery, and two counts of attempted aggravated robbery. The reckless homicide conviction was merged into the felony murder conviction, and the trial court sentenced the Defendant to, effectively, life in prison. On appeal, the Defendant alleges four errors: (1) the State committed a *Brady* violation, entitling him to a new trial; (2) the trial court erred in refusing to admit evidence of the victim's toxicology report; (3) the State presented insufficient evidence to support the Defendant's conviction for felony murder; and (4) the trial court erred in refusing to grant a motion for judgment of acquittal as to the first-degree premeditated murder charge. After a thorough review of the record and applicable law, we affirm the judgments of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and J.C. MCLIN, J., joined.

Eileen M. Parrish and Jeffrey Powell, Nashville, Tennessee, for the Appellant, Twain DeMario Vaughn.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Benjamin A. Ball, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Jeff Burks and Kathy Morante, Assistant District Attorneys General, for the Appellee, State of Tennessee.

**OPINION**

**I. Facts**

The Defendant's convictions were the result of a shooting in Nashville. Four individuals were driving towards downtown Nashville when they stopped in the parking lot of a vacant building, and, as they waited in the car, four young men approached the car. Two of the young men and three of the passengers all testified at trial that the Defendant then attempted to rob the passengers and that he shot and killed one of the passengers. Specifically, the following evidence was presented at trial:

Kandice Regina Smith testified she lived in North Carolina, and she came to Nashville in July 2004 to see her brother, Kris Carlyle, the victim, along with her mother, Kathy Smith, and her boyfriend, Paul Puckett. The night of July 7, 2004, the four of them drove around the city "sightseeing" in Smith's mother's two-door Chrysler Lebaron. Smith's mother drove, Carlyle sat in the front passenger seat, Smith sat behind her mother, and Puckett sat behind Carlyle.

Smith testified they found themselves lost, and they stopped because four young black men walked into the road. Carlyle rolled down his window to attempt to ask for directions, and the young men instructed them to pull off the road. They pulled the car into the parking lot of a vacant restaurant, and three of the young men walked up to the car. Smith testified that, suddenly, the fourth man "c[a]me out of nowhere and put a gun in the car and demanded our money." Carlyle gave the man ten dollars. Smith described the gun as a dark revolver. Smith stated, "Then he pointed the gun at my boyfriend and asked him for his money and he told him he didn't have any. Then he pointed the gun at me and asked me for my money and I told him I didn't have any, and then he turned back and pointed the gun at my brother and shot him" once in the neck. The other three young men did not participate in the robbery or say anything to the passengers.

The car sped away, and the group eventually found a hospital. The police arrived at the hospital where they discussed the situation. Later that night, the passengers and the police returned to the location of the shooting to search for evidence. Two days later, Smith met with Detective Coleman, who presented her with a photo lineup. She identified the Defendant as the shooter from the pictures. Smith testified that none of the other three young men appeared to have a weapon.

On cross-examination, Smith explained that they arrived at the vacant lot because they turned off the main road in order to ask directions. They first met Detective Coleman at the hospital, they took him to the crime scene, and they then went to the station to be interviewed. Smith admitted that the shooter may have been wearing red, and, when pressed about the shooter's hair style, Smith stated, "you could braid it [-] it looked like, it just wasn't done." Additionally, Smith told Detective Coleman there appeared to be a young man with "cornrows" who first approached the car.

Paul Nelson Puckett, Jr., testified to the same background information as Smith. Specifically, he stated they were driving on a "fairly big road" towards downtown Nashville. As

they were driving, there were “[j]ust four people, just, basically, making their way across the road, and we had to basically either stop or run over them.” Carlyle was going to ask for directions, but the young men motioned for the car to pull off the road. Puckett described everything as happening very quickly. There were four young black men, and three of the young men walked up to Carlyle’s side of the car. Then, the fourth man walked up and “put[ ] a gun through the window and demand[ed] some money.” Carlyle gave the man ten dollars. After getting money from Carlyle, the man demanded money from Puckett and Smith, and he then turned and shot Carlyle.

They sped off and ultimately found someone to lead them to a hospital. Carlyle did not talk during the short trip to the hospital. Later, Puckett met with Detective Coleman and reviewed photographs of individuals in a line-up format. Puckett picked out two individuals, one being the Defendant and the other an unassociated individual. In court, Puckett identified the Defendant as the shooter.

On cross-examination, Puckett explained he could not remember if he told Detective Coleman that the Defendant was the shooter when he was interviewed. After reviewing a tape of the interview outside the presence of the jury, Puckett admitted that he did not positively identify the Defendant as the shooter during the initial interview. In further describing the shooter, Puckett stated that the shooter wore red, had “cornrows,” was the tallest, and looked the oldest. On redirect-examination, Puckett stated that the Defendant’s hair was different in court than when he first identified the Defendant.

Kathy Smith, the victim’s mother, testified that Carlyle was an aspiring singer/songwriter living in the Nashville metropolitan area when he was killed. On the night in question, the group was driving downtown so Carlyle could sing and play his guitar. Kathy Smith stated that they found themselves lost and saw a “perfect opportunity to stop and ask for directions” when they saw four young men in the road. Carlyle rolled down his window when the young men motioned the car to pull off the road to get out of traffic. Three of the young men approached the car and then the fourth man approached. The first three did not appear to be armed, but the fourth man pointed a revolver at Carlyle and demanded money. Carlyle gave the man ten dollars, but the other occupants of the car did not have any money. He then pointed the gun at Carlyle and shot once. Kathy Smith testified that she could not identify the shooter because she could not see his face from where she was sitting.

Kathy Smith testified that they asked Carlyle if he had been hit, and, when he turned, blood “gushed” from his mouth; he could not speak. They found someone to lead them to the hospital, but Kathy Smith believed her son died during the car ride to the hospital.

On cross-examination, Kathy Smith testified that she did not recall telling an officer at the hospital that the three young men approached the car with “small plastic bags.” She stated that they were traveling downtown for Carlyle to play his guitar on the corner for money. She also again admitted that she could not identify the shooter.

DeEarl Huddleston testified that he was seventeen years old and was familiar with the First Avenue and Lafayette Street area in Nashville. Huddleston stated that, on July 7, 2004, he was in that area with three friends, Ja Marable, Ta Marable, and the Defendant. They were walking from Lafayette Street to their neighborhood when they saw the automobile in which the victim was riding. Huddleston testified that they were about to cross the street when the individuals “stopped and asked if we had any drugs to sell them.” Huddleston did not recall specifically which person asked for the drugs, but Huddleston asked them, “what kind of drugs?” They said they did not care, and, because Huddleston had marijuana, the car pulled into the Mr. Burger vacant parking lot. The individuals in the car purchased marijuana from one of the other individuals, Ja Marable, and Huddleston moved to walk away from the transaction.

Huddleston testified that he heard the Defendant say “set it out,” a phrase that is commonly used in the context of a robbery. He then heard the Defendant fire a shot into the car. The four young men then ran from the scene. Huddleston testified that the gun was a black .38 Special and that neither he nor Ja Marable or Ta Marable had a weapon. They were not aware that the Defendant was going to rob and shoot the passengers in the car.

Huddleston further testified that Rosalyn Blakely is his aunt, his mother’s sister. Huddleston stated that, after the shooting, he went home and discussed the situation with his mother and Blakely. They took Huddleston to Detective Coleman the next day, and Huddleston gave the detective the name “Ty” because he did not know the Defendant’s real name.

On cross-examination, Huddleston admitted that he previously testified that the Defendant was wearing a black shirt. Huddleston also admitted that he was selling drugs that night, and his mother made him go to the police. Huddleston stated that he had convictions in juvenile court of theft and attempted theft. When questioned about their relative heights, Huddleston stated that he was the tallest, Ta Marable the second tallest, then the Defendant, and Ja Marable the shortest. Huddleston admitted that he had been friends with the Marable brothers for some time, and after the shooting the three of them again met up that night to “hang out.”

Officer Claude W. Mann testified that he was “working radar” at Fourth and Lafayette in Nashville when he stopped a truck. As he was talking to the individuals in the truck, a woman, Rosalyn Blakely, who Officer Mann knew from working the area, yelled at him. Blakely said that she wanted to tell him about something that had been worrying her: she had information about the shooting of the victim in this case. Officer Mann called for a detective, Todd Watson, who arrived and talked with Blakely.

Jacarlvís (“Ja”) Marable testified that he was thirteen years old. He stated that he was with his brother, Ta, DeEarl Huddleston, and the Defendant the night of July 7, 2004. They were proceeding home when they crossed Lafayette Avenue. A car stopped because the four of them were in the road, and someone from the car yelled at them to move. Someone from the car also asked the young men whether they had drugs, and the car then pulled into the Mr. Burger parking lot. Huddleston and the Defendant first approached the car, but Ja Marable and Ta

Marable did not immediately approach the car because their cousin, Neecey Marable, called to them. The route to Neecey Marable's house took them past the car stopped at the Mr. Burger. They stopped briefly at the car and saw Huddleston hand the passengers marijuana.

Ja Marable then testified that he saw the Defendant pull out a gun, and he heard Huddleston say, "give me everything." Marable said, "the car tried to pull off, and the gunshot went off, I don't know if the car hit the gun and made the gunshot go off or he pulled the trigger or whatever, I don't know, it was either one." Marable stated that he knew he and his brother did not have a weapon, but he did not know whether Huddleston had one. After the shooting, Marable and his brother went one direction and Huddleston and the Defendant went another. Marable testified he spoke with Detective Coleman the next day. At that time, he was shown a picture line-up, and Marable identified the Defendant as the shooter.

On cross-examination, Marable testified that the Defendant was wearing a black shirt. Marable's brother, Ta, had his hair half braided, half out, because "he was taking it down." Marable affirmed that he did not sell any drugs and that Huddleston was part of the robbery.

Detective Hugh Coleman testified that he was first contacted about a shooting around midnight on July 7, 2004. He responded to Centennial Hospital where he found the victim already deceased. He interviewed the other passengers in the early morning hours of July 8, and then, accompanied by Paul Puckett and Kandice Smith, he found the crime scene. The next day, July 9, 2004, a patrol officer was flagged down and told of a witness, DeEarl Huddleston. After interviewing Huddleston, they interviewed Ja Marable who identified the Defendant from a picture line-up. Next, Candace Smith also identified the Defendant from a photo line-up. Paul Puckett was shown a line-up, and he identified two possible individuals, one being the Defendant. Kathy Smith was unable to identify anyone.

Detective Coleman testified that the Defendant and his parents arrived at the criminal justice center in order to meet with him on July 9. The Defendant's mother requested an attorney, so Detective Coleman did not question him that night. Detective Coleman did talk with the Defendant's mother about the process. At some point in the discussion, Detective Coleman began to describe what he had heard about the incident. Detective Coleman stated that the car pulled up and asked, "Do you have anything for me?" Detective Coleman testified that the Defendant then sat up and excitedly said, "Yes, he did, that's what he said."

Detective Coleman testified that he interviewed Ta Marable on July 12 but that he ultimately determined that none of the other three young men would be charged with a crime. He believed that none of the three knew the Defendant had a weapon or that they participated in the robbery. Detective Coleman admitted that he did not create a photo line-up with any of the other three young men in it. Detective Coleman stated that the police never recovered a weapon.

On cross-examination, Detective Coleman testified that Paul Puckett told him, in his

interview four hours after the shooting, that the shooter was the tallest of the group and wore a red shirt. Puckett also told Detective Coleman that the shooter had braids and the gun was black with a brown handle. Detective Coleman stated he did not prepare a line-up with pictures of individuals with braids because he did not have a picture of the Defendant in braids. Additionally, he admitted he did not prepare a line-up for the victim's family members with any of the other three young men in it. Although he was not totally sure, Detective Coleman agreed that Ja Marable was probably the shortest, and Huddleston and Ta Marable were the tallest of the group.

Detective Coleman testified that, during the course of the investigation, he came across the name "Danesa Nelson" as the person to whose house the Marable brothers went after the shooting. Detective Coleman admitted he did not attempt to locate or interview Nelson. Detective Coleman testified that one could see the interstate from the Mr. Burger parking lot. He admitted that there was no physical evidence linking the Defendant to the shooting, and the young men likely discussed the shooting at some point after it occurred.

Dr. Staci Turner testified that she performed the autopsy on the victim in this case. The victim died from a gunshot wound that entered his neck and proceeded through his chest cavity, a normally fatal wound. Based on the nature of the wound, Dr. Turner stated that the gun was approximately one to three feet away from the victim when it was fired. Because Dr. Turner found blood in the victim's lungs, she determined he lived a short time after he was shot.

On cross-examination, Dr. Turner testified that it would be possible for gunshot residue to get on the shooter. From the angle of the entry wound, it appeared that the shooter was standing when the shot was fired.

Upon this evidence, the jury convicted the Defendant of reckless homicide, felony murder, aggravated robbery, and two counts of attempted aggravated robbery. The reckless homicide was merged with the felony murder, and the Defendant was sentenced to life in prison for the felony murder, with all the other sentences running concurrently with that sentence.

## **II. Analysis**

On appeal, the Defendant raises the following issues: (1) the State committed a *Brady* violation, entitling him to a new trial; (2) the trial court erred in refusing to admit evidence of the victim's toxicology report; (3) the State presented insufficient evidence to support the Defendant's conviction for felony murder; and (4) the trial court erred in refusing to grant a motion for judgment of acquittal as to the first-degree premeditated murder charge.

### **A. *Brady* Violation**

First, the Defendant asserts that the State committed a *Brady* violation when it furnished the Defendant with six videotaped interviews of witnesses two days before trial. Under the

United States Supreme Court decision of *Brady v. Maryland*, 373 U.S. 83 (1963), a criminal defendant, upon request, has a right to material evidence in the possession of the State. *Id.* at 87. In order to establish a violation of *Brady*, four requirements must be met:

1. The Defendant must have requested the information (unless the evidence is obviously exculpatory, in which case the State is bound to release the information, whether requested or not);
2. The state must have suppressed the information;
3. The information must have been favorable to the accused; and
4. The information must have been material.

*State v. Biggs*, 218 S.W.3d 643, 659 (Tenn. Crim. App. 2006); *see State v. Edgin*, 902 S.W.2d 387, 389 (Tenn. 1995).

“The defendant has the burden of proving a constitutional violation by a preponderance of the evidence.” *Biggs*, 218 S.W.3d at 659 (citing *State v. Spurlock*, 874 S.W.2d 602, 610 (Tenn. Crim. App. 1993)). “Demonstrating a constitutional violation requires the defendant to show that without the omitted material he has been denied the right to a fair trial.” *Id.* (citing *United States v. Agurs*, 427 U.S. 97, 108 (1976)). “In other words, the inquiry is whether we can be confident that the jury’s verdict would have been the same if the state had disclosed the favorable evidence to the defendant.” *Id.* (citing *Kyles v. Whitley*, 514 U.S. 419, 453 (1995)).

The State asserts that it did not “suppress” the video tapes; it merely delayed furnishing the Defendant with the tapes. We agree with the State.

Tennessee courts analyze delayed disclosure differently from outright suppression, focusing on the prejudice of the delay. In *United States v. Blood*, the Sixth Circuit stated, “*Brady* generally does not apply to delayed disclosure of exculpatory information, but only to a complete failure to disclose and that a [d]elay only violates *Brady* when the delay itself causes prejudice.” 435 F.3d 612, 627 (6th Cir. 2006) (citing *United States v. Bencs*, 28 F.3d 555, 560-61 (6th Cir.1994)) (quotations omitted); *see State v. Caughron*, 855 S.W.2d 526, 548 (Tenn. 1993) (Daughtrey, J., dissenting) (“no violation occurs as long as *Brady* material is disclosed to a defendant in time for its effective use at trial.”) (quoting *United States v. Smith Grading & Paving, Inc.*, 760 F.2d 527, 532 (4th Cir. 1985) (citing *United States v. Higgs*, 713 F.2d 39 (3d Cir. 1983))), *cert. denied sub nom. Dellinger v. United States*, 474 U.S. 1005 (1985); *State v. Larry Boykin*, No. E2005-01582-CCA-R3-CD, 2007 WL 836807, at \*13 (Tenn. Crim. App., at Knoxville, Mar. 12, 2007).

In our view, the Defendant was furnished with the tapes in time to use them effectively at trial. The tapes contained statements concerning, among other things, what the shooter was wearing, and this information was used to cross-examine witnesses quite thoroughly. Additionally, we note that the Defendant did not complain of the late disclosure at trial. Relief will not be granted when the Defendant failed to take the appropriate action at the trial level. *See*

Tenn. R. App. P. 36(a). The Defendant failed to notify the trial court that he could not effectively proceed with trial because of the late disclosure. The failure to request a continuance constitutes waiver. The Defendant is not entitled to relief on this issue.

### **B. Sufficiency of the Evidence**

Next, the Defendant argues that there was insufficient evidence to support the Defendant's conviction for felony murder. When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see Tenn. R. App. P. 13(e); *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999).

In determining the sufficiency of the evidence, this Court should not re-weight or re-evaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999); *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956). "Questions concerning the credibility of witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *Liakas*, 286 S.W.2d at 859. "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978); *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

*Bolin v. State*, 405 S.W.2d 768, 771 (Tenn. 1966) (citing *Carroll v. State*, 370 S.W.2d 523 (Tenn. 1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (citing *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000).



The Tennessee Code requires the following for felony murder: a killing must occur in the perpetration of or an attempt to perpetrate an underlying felony, per the indictment, robbery. T.C.A. § 39-13-202(a)(2) (2006). The evidence in this case established that the victim, Carlyle, was killed; numerous individuals testified to that fact. Thus, the central question is whether the State presented sufficient evidence to support the jury's findings that: (1) the Defendant committed aggravated robbery or either count of attempted aggravated robbery, and (2) that the killing occurred in the perpetration of this aggravated robbery or attempted aggravated robbery.

"Robbery" is defined as, "the intentional or knowing theft of property from the person of another by violence or putting the person in fear." T.C.A. § 39-13-401 (2006). Aggravated robbery is "robbery" where a deadly weapon is used or "the victim suffers serious bodily injury." T.C.A. § 39-13-402(a)(1) & (2) (2006).

The Defendant focuses his argument on the factual discrepancies in the various witnesses' testimonies. The Defendant notes that there are reasons to disbelieve Huddleson and Ja Marable's testimony. However, this Court does not make credibility determinations. When viewing the evidence in the light most favorable to the State, the following evidence was presented: four young men were crossing the street when a car pulled up, with the victims inside. For whatever reason, the car proceeded to the parking lot of the vacant Mr. Burger. Three of the young men approached the passenger side of the car, and the fourth, the Defendant came up a short time later. The Defendant brandished a weapon and pointed it at the victim, Carlyle, demanding money. The victim gave the Defendant ten dollars; then the Defendant demanded money from the two passengers sitting in the back of the car. They did not give the Defendant any money. The Defendant then turned back and shot Carlyle in the neck, killing him.

One of the passengers in the car, Kandice Smith, positively identified the Defendant. The other two individuals in the car, Kathy Smith and Paul Nelson Puckett, Jr., testified that the shooter demanded the money from the three. Huddleston and Marable also testified that the Defendant was the individual holding the weapon and that he was the shooter. There is sufficient evidence from which a rational jury could conclude that the victim was killed by the Defendant in the perpetration of an aggravated robbery. The Defendant is not entitled to relief on this issue.

### **C. Motion for Judgment of Acquittal**

The Defendant next contends that the trial court erred in denying the Defendant's motion for a judgment of acquittal on the first-degree premeditated murder charge. Premeditation is defined by statute as follows:

"[P]remeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the

time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

T.C.A. § 39-13-202(d). Although we are inclined to agree that the State did not present evidence to support premeditation, the Defendant was ultimately acquitted of first-degree premeditated murder and convicted of felony murder. Any error by the trial court is, therefore, harmless. *See* Tenn. R. App. P. 36(b); Tenn. R. Crim. P. 52(a). The Defendant is not entitled to relief on this issue.

#### **D. Toxicology Report**

Finally, the Defendant complains that the trial court erred in refusing to allow him to present evidence of the victim's toxicology report that would show the victim had marijuana, anti-depressants, and alcohol in his system at the time of his death. The Defendant asserts that this evidence would have shown the jury that the witnesses from the car were untruthful in their testimony that they were merely looking for directions, and that, therefore, these witnesses may well have also been untruthful in implicating the Defendant in these crimes.

Determinations made about the admissibility of evidence rests within the sound discretion of the trial court and that decision will not be disturbed absent a showing of an abuse of discretion. *State v. Robinson*, 146 S.W.3d 469, 490 (Tenn. 2004); *see State v. James*, 81 S.W.3d 751, 760 (Tenn. 2002). We will not find an abuse of discretion unless it appears that the trial court applied an incorrect legal standard, or reached a decision which is against logic or reasoning and caused an injustice to the party complaining. *See James*, 81 S.W.3d at 760; *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997).

The specific piece of evidence in issue, the toxicology reports, the court determined to be propensity evidence. *See* Tenn. R. Evid. 404(b). However, under *State v. Stevens*, Rule 404(b) does not apply to the victim or witnesses in this case. 78 S.W.3d 817, 836-37 (Tenn. 2002). The *Stevens* Court stated, “Evidence of crimes, wrongs or acts, if relevant, [is] not excluded by Rule 404(b) if [the acts] were committed by a person other than the accused.” *Id.* at 837 (quoting *State v. DuBose*, 953 S.W.2d 649, 653 (Tenn.1997)).

Thus, it would appear the only exclusionary rule that applies here is Rule 403. Rule 403 states that relevant “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” It does not appear that this rule would exclude the evidence sought to be admitted in this case, thus, it was error to prevent the admission of the testimony.

“Nevertheless, while the court erred in excluding this testimony, we look at the effect of that error on the trial by evaluating that error in light of all of the other proof introduced at trial.”

*Stevens*, 78 S.W.3d at 837 (citing *State v. Gilliland*, 22 S.W.3d 266, 274 (Tenn. 2000)). ““The more the proof exceeds that which is necessary to support a finding of guilt beyond a reasonable doubt, the less likely it becomes that an error affirmatively affected the outcome of the trial on its merits.”” *Id.* (quoting *Gilliland*, 22 S.W.3d at 274).

The Defendant was attempting to introduce a toxicology report that would state the victim had marijuana in his system at the time of his death. The victim’s use of marijuana would make it more likely that the group was actually purchasing marijuana from the four young men, rather than seeking directions as the other car passengers testified. The Defendant argues that this would impeach the credibility of those witnesses, thereby calling into question their testimony that the Defendant shot Carlyle. We conclude this argument is too tenuous to have had any affirmative affect at trial in the face of numerous eyewitness statements linking the Defendant to the crime. Thus, we conclude the error was harmless. *See Spicer v. State*, 12 S.W.3d 438, 447-48 (Tenn.2000) (“[T]he line between harmless and prejudicial error is in direct proportion to the degree . . . by which proof exceeds the standard required to convict. . . .”).

As we have found harmless error in excluding the testimony, we need not address in depth the Defendant’s due process claim that he was denied the right to present a defense. *See State v. Flood*, 219 S.W.3d 307, 316-17 (Tenn. 2007); *see also Chambers v. Mississippi*, 410 U.S. 284, 294 (1973); *State v. Brown*, 29 S.W.3d 427, 431 (Tenn. 2000). In determining whether an exclusion of evidence rises to the level of a constitutional violation, we are directed to consider the following: (1) Whether the excluded evidence is critical to the defense; (2) Whether the evidence bears sufficient indicia of reliability; and (3) Whether the interest supporting the exclusion of evidence is sufficiently important. *Flood*, 219 S.W.3d at 317 (citations omitted). Harmless error requires a finding that the error did not affect the outcome of the trial. Thus, by nature, the evidence was not “critical to the defense.” Additionally, Huddleston and Marable’s testimony that the group was there to purchase drugs allowed the Defendant to make the same argument. We conclude that the evidence fails the *Flood* test, and his constitutional right to present a defense was not violated. The Defendant is not entitled to relief on this issue.

### III. Conclusion

Based on the foregoing reasoning and authorities, we conclude that there is sufficient evidence upon which to convict the Defendant of felony murder. The trial court committed harmless error in refusing to admit toxicology reports and in failing to grant the motion for judgment of acquittal to the first-degree premeditated murder charge. Additionally, no *Brady* violation was committed. We affirm the judgments of the trial court based on the foregoing authority and reasoning.

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ROBERT W. WEDEMEYER, JUDGE